

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:4

PLR-115849-14

Date:

October 7, 2014

### Legend

Parent	=	
Foreign Holding	=	
Domestic Holding	=	
Business C	=	
State A	=	
Series A Preferred Stock	=	
Series B Preferred Stock	=	
<u>x</u> %	=	

Date 1	=	
Date 2	=	
Date 3	=	
Date 4	=	
Date 5	=	
Date 6	=	
Exchange	=	
\$ <u>a</u>	=	
\$ <u>b</u>	=	
\$ <u>c</u>	=	
\$ <u>d</u>	=	
\$ <u>e</u>	=	
\$ <u>f</u>	=	
<u>g</u>	=	
<u>h</u>	=	

Dear \_\_\_\_\_ :

This letter responds to your authorized representative's letters dated March 28, 2014 and August 1, 2014 requesting rulings under sections 1502 and 1504 of the Internal Revenue Code. The information submitted for consideration is summarized below.

Prior to Date 2, Parent was the common parent of an affiliated group of corporations that had elected to file consolidated federal income tax returns (the "Parent Consolidated Group"). The Parent Consolidated Group is engaged in Business C.

Prior to Date 2, Foreign Holding owned 100% of the outstanding common stock of Parent (the "Common Stock"). Additionally, Parent had two classes of publicly traded

stock outstanding; Series A Preferred Stock and Series B Preferred Stock (collectively, the “Preferred Stock”).

On Date 2, Foreign Holding effected a domestication under State A law and incorporated itself as Domestic Holding, in a transaction intended to be treated as a reorganization described in section 368(a)(1)(F) (“F Reorganization”).

On Date 3, Domestic Holding and Parent consummated a merger intended to be treated as a reorganization described in section 368(a)(1)(A) (“A Reorganization”), with Parent surviving the merger.

The terms of the Series A Preferred Stock include the following:

**Ranking:** The Series A Preferred Stock will rank senior to the Common Stock, be equal to issued parity stock, and junior to any senior stock issued.

**Term:** Perpetual, or until redemption.

**Penalty Rate (x%):** Occurs under two circumstances: i) Parent’s failure to pay accrued cash dividends in full for any monthly dividend period within a quarterly period for a total of four quarterly periods (Dividend Default); or ii) Parent’s failure to maintain the listing of the Series A Preferred Stock on the Exchange or comparable national exchange for 180 days or more consecutive days (Listing Default).

**Redemption Preference:** The holders of Series A Preferred Stock have no right of redemption. The Series A Preferred Stock may be redeemed in whole or part solely at Parent’s option on or after Date 4 at a redemption price of \$a per share, plus all accrued and unpaid dividends thereon to the date fixed for redemption, without interest. In the event of a change of ownership or control of Parent or Parent’s parent (as fully described in the Series A Preferred Stock offering), Parent has the option to redeem all, but not part, of the Series A Preferred Stock within 90 days of the change. If the change of ownership or control occurs prior to Date 4, the redemption price is \$b per share, plus accrued and unpaid dividends. If the change of ownership or control occurs before Date 5, the redemption price is \$c; if it occurs prior to Date 6, the redemption price is \$d.

**Liquidation Preference:** If Parent liquidates, dissolves, or winds up its operations, holders of Series A Preferred Stock have the right to receive \$a per share, plus all accrued and unpaid dividends up to and including the date of payment. Liquidation payments will be made to holders of Series A Preferred Stock before payments are made to holders of Parent’s Common Stock and any other equity ranked junior to the Series A Preferred Stock.

**Voting Rights:** Holders of Series A Preferred Stock generally have no voting rights with respect to Parent, except a two-thirds approval of the Series A Preferred Stock is

required to: i) amend Parent's certificate of incorporation, if such change materially affects the rights, preferences, or voting power of the Series A Preferred Stock holders; ii) authorize, reclassify, create, or increase the authorized amount of stock having senior rights to the Series A Preferred Stock with respect to payments of dividends, or amounts upon liquidation, dissolution, or winding up. Additionally, if either a Dividend Default or Listing Default occurs, the board of directors of Parent will be increased by two additional members, and the holders of Series A Preferred Stock voting as a class will have the right to elect two additional directors to serve on Parent's board of directors.

On Date 1, Parent issued g shares of Series A Preferred Stock at \$e per share. From time to time subsequent to Date 1, Parent made subsequent offerings of Series A Preferred Stock up to a total of h shares. The average issue price for all issuances was \$f.

### **Representations**

Parent makes the following representations:

- (a) Immediately prior to Date 2, Foreign Holding owned 100% of Parent Common Stock. But for the Series A Preferred Stock, Foreign Holding's ownership of Parent's stock met the requirements of section 1504(a)(2).
- (b) Immediately following the Date 2 transaction through Date 3, Domestic Holding owned 100% of Parent Common Stock. But for the Series A Preferred Stock, Domestic Holding's ownership of Parent's stock met the requirements of section 1504(a)(2).
- (c) The domestication of Foreign Holding into Domestic Holding on Date 2 qualified as a reorganization under section 368(a)(1)(F) .
- (d) Parent and Domestic Holding were includible corporations within the meaning of section 1504(b) from Date 2 through Date 3.
- (e) At the time the Series A Preferred Stock was issued, it was expected that the likelihood that a Dividend Default or Listing Default would occur was remote.
- (f) Between Date 2 and Date 3 no Dividend Default or Listing Default occurred.
- (g) At the time the Series A Preferred Stock was issued, it was expected that the likelihood of a change of ownership or control of Parent or Parent's parent occurring was remote.

- (h) Between Date 2 and Date 3 no change of ownership or control of Parent or Parent's parent (Domestic Holding) occurred.
- (i) The holders of Series A Preferred Stock have never had a right to force the redemption of their shares.

### **Rulings**

Based solely on the information and the representations set forth above, we hold as follows:

- (1) The Series A Preferred Stock constitutes stock described in section 1504(a)(4).
- (2) The Date 2 transaction did not cause a termination of the Parent Consolidated Group, with Domestic Holding as the common parent of the Parent Consolidated Group through Date 3. Section 1.1502-75(d).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling [PLR-115849-14].

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)